

From: Joe Buczek
To: Microsoft ATR
Date: 1/24/02 2:32am
Subject: Microsoft Settlement

Dear DOJ,

The proposed Microsoft Settlement is wholly inadequate in addressing Microsoft's -illegal- anti-competitive behaviors. It does not address the mechanisms by which Microsoft was able to engage in these behaviors. The Microsoft corporation is GUILTY of illegal and anti-competitive activities. These activities reduce competition and, thus, increase the price and reduce the quality of available software technologies for all consumers.

As an independent software developer with over 25 years of experience, and as a fair minded U.S. Citizen and taxpayer, I expect Microsoft to be held accountable as a -convicted- lawbreaker, as I would be held accountable if I were found guilty of breaking laws. The punishment must fit the crime. The proposed settlement doesn't begin to approach an appropriate level of punishment or address the anti-competitive behaviors of the guilty party in a way that would allow redress. A reasonable settlement must include at a minimum:

1. Each and every Microsoft API and each and every data file format and message format shall be documented by Microsoft and published, without license or restriction, on the World Wide Web. Further, no software may be released commercially or to developers by Microsoft prior to the publication of these specifications, including any software enhancement revisions. The spirit of this is to enable third parties to write software that can legally and reliably interoperate with Microsoft products.
2. Any instance of Microsoft employing undocumented APIs or intentionally created incompatibilities in their products shall result in a fine of \$10,000,000 per day, per instance. Reverse engineering of their products must be exempted under the DMCA for the purposes of the discovery of these and other related practices. Twenty percent (20%) of any fines collected will be awarded to the first person or organization who reports them to the DOJ. Reporting of these offenses shall be facilitated by the establishment of a DOJ server whose sole purpose is to collect and disseminate such reported violations.
3. Microsoft shall be required to sell its software to all parties for the same price, and such prices shall be published without restriction on the World Wide Web at all times. Full disclosure of pricing is necessary to prevent predatory anti-competition in the OEM space.

4. The terms and conditions of all licenses shall be made available to the DOJ for a period of 20 years. No agreement may be entered into by Microsoft or its subsidiaries without the DOJ receiving a copy during this period.
5. Any attempt by Microsoft to circumvent these penalties shall result in a prosecution of the corporation and its management under RICO because the corporation and its officers have already been found guilty of illegal and conspiratory behavior.

Anything less than the above terms would not be in the public interest.

Under these terms, Microsoft would continue to be a dominant market force, if not the dominant force, in the software market for years to come. However, forcing them to publish their APIs and data formats would open them up to true competition in technology. They could charge whatever they wanted for products, but they would have to tell EVERYBODY what they were charging for everything, and could not use predatory or bundling pricing to achieve coercion, as they have been found guilty of doing.

Creating a significant punitive punishment system for detecting violations at the technology level would create an incentive for private individuals, most likely in the software business, to keep Microsoft honest. Anyone finding breeches of this part of the judgement would potentially find themselves being funded by Microsoft to become a competitor!! In this regard, enforcement not only isn't a taxpayer burden, but finding and reporting violations could actually result in creating further competition. Ultimately, taxpayers are served twice by this: 1) not having to pay for enforcement, and 2) benefitting from better, cheaper software products.

In closing, I respect Microsoft as a successful American icon. I frequently use their products, but I have also found both my professional and my consumer interests limited by their practices. And because of my professional experience, I also know that better products would be available if true competition were possible. Such competition is not presently possible, nor would it be under the Proposed Final Judgement because nothing in the judgement guarantees that Microsoft will "allow" competition of technologies.

Since when do guilty parties get to decide what their punishment should be? Who better than the public is in a position to determine "what is fair" in this case? Microsoft is GUILTY. The punishment should fit the crime. They are guilty of PREVENTING COMPETITION. The punishment should FORCE THEM TO ACCEPT COMPETITION. Nothing could be simpler than this. If the company is not willing to accept a fair judgement, then justice must prevail upon the guilty party to do what society deems is appropriate. No murderer -wants- life imprisonment or the death penalty, but surely, there are instances where these are Necessary and Right and Just. The guilty party in this case is not

going to acquiesce and accept what is fair. It is up to the justice system to mete out an appropriate punishment. The one I have described above would, in my opinion, be fair.

Respectfully,
--Joseph Buczek
San Jose, Ca

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